

MINORITY OWNED AND LOCAL SMALL BUSINESS TASK FORCE

MEETING MINUTES

August 12, 2015 – 5:30 p.m.

6th Floor Council Conference Room, Council Office Building

Members Present

Mayra Bayonet
Margo Briggs
Cherian Eapen
Janice Freeman
Warren Fleming

Herman Taylor
Bethsaida Wong

Member Absent

Julian Haffner

County Staff Present:

Robert Drummer, County Council
Karen Federman-Henry, County Attorney's Office
Linda McMillan, County Council
Mary Anne Paradise, County Council
Linda Price, County Council

I. Presentation from Cherri Branson, Director, Office of Procurement

Ms. Branson gave remarks concerning the role of the Office of Procurement and goals for improvement, which include increasing MFD and LSB participation in County contracts and streamlining the procurement process. She expressed the view that artificial barriers to participation should be eliminated, and commented on Bill 48-14, Purchases from Minority Owned Businesses - Procedures - Request for Proposals, which was enacted by the County Council in April 2015. Ms. Branson noted that the Disparity Study was used to determine how additional points should be awarded during the procurement process, and that the objective is to build capacity in the subcontracting arena so that subcontractors can move toward becoming prime contractors. She said the Office enforces the subcontracting plan put forth by primes, and also enforces the living wage and prevailing wage laws. The Office reviews contracts on a regular basis to determine if the prime is making good faith efforts toward the utilization of MFDs.

The Office is reviewing the boiler plate Request for Proposal (RFP) in an effort to help streamline the process. Ms. Branson commented that the Office does not operate in a vacuum, noting the role of the using departments and contract administrators to help with enforcement of the subcontracting plan. She said a workshop is planned with non-profit vendors in late September. The Office is also working on the reinstatement of a periodic report on the use of purchase orders (under \$10k) as a way to look for patterns of any barriers to the utilization of MFD businesses.

Ms. Branson responded to questions from members of the Task Force:

- Ms. Freeman commented on the role of contract administrators and what may be an “embedded mind set”, and on purchase orders under \$10,000. Ms. Branson said all RFP's are reviewed, and if overly specific, questions are raised, noting that part of her job is to ensure that taxpayer funds are spent efficiently and economically, and that a

case-by-case analysis is conducted. She stated that the reinstatement of the periodic report on purchase orders will allow patterns to be reviewed as well as who has purchase authority.

- Ms. Briggs inquired if she read the Disparity Study; Ms. Branson indicated that while she served on the County Council, she reviewed the study during Council consideration of Bill 48-14.
- Mr. Fleming asked if she would have influence over the Council's decisions regarding the Task Force recommendations in its report, and suggested that the boilerplate RFP reflects both MFD and LSBs. Ms. Branson said that she would participate in Council committee discussions about the report. Regarding the RFP boilerplate, she indicated there would be a checklist of items to be considered by Using Departments, and that it should be available online.
- Ms. Bayonet inquired about the procedure concerning Bill 23-15, Contracts – Local Small Business Reserve Program – Amendments regarding bridge contracts. Ms. Branson explained that the Bill provides a definition of local small business, and that emergency contracts are excluded. She said bridge contracts are across jurisdictions or to allow for buying in bulk to get the best price. A bridge contract is not initiated by the County; a cooperative contract is initiated by the County.
- Mr. Eapen commented that tax checks, license fees, etc., were processed in Philadelphia and questioned why this was not done locally. Ms. Branson said she was not aware of the situation and asked that she be emailed the information.
- Mr. Taylor commented on the prime contracting culture and the 20% goal. Ms. Branson commented on enforcement of subcontracting plans and expressed the view that there hasn't been any meaningful enforcement in the past. If company is in the LSBRP program, it can't be a broker.

II. Call to Order

The meeting was officially called to order by Task Force Chair Taylor at 5:52 p.m. and the minutes of July 29, 2015, were unanimously approved as amended by all members present. The closed session minutes from the July 29, 2015 meeting were distributed to Task Force members for review.

III. Worksession – Vote on Recommendations

Members of the Task Force reviewed and commented on preliminary recommendations as included in the Draft-Version 6 distributed at the meeting. Some of the recommendations were approved without additional discussion; others required clarification and additional consideration. Additional discussion of the recommendations will be included in the final report.

The recommendations approved are as follows: (recommendations were approved without objection, unless noted)

1. Bring accountability to the MFD subcontractor participation requirement
 - Require MFD subcontracting plan submission sooner in the procurement process
 - Require prime contractors to submit written documentation on outreach efforts

Enforce stringent criteria for waivers and improve transparency for approvals or denials

2. Strengthen MFD program compliance and monitoring.
3. Institute a prompt payment clause for subcontractors. This recommendation will be amended to include language requiring prime contractors report payments to subcontractors. The language regarding restitution funds was removed. *Ms. Wong was temporarily absent.*
4. Increase number of firms obtaining certification and streamline the County's MFD certification process.
5. Create a MFD program Standard Operating Procedure manual.
6. Require minimum number of bids from minority firms. *Ms. Wong abstained.*
7. Require headquarters be based in Montgomery County. Ms. Bayonet will work with Council staff on providing additional information regarding bridge contracting issues that were recently uncovered.
8. Expand County outreach programs.
9. Invite potential MFD prime and subcontractors to attend pre-bid conferences for high value contracts.
10. Increase formal interaction between the County Chambers of Commerce to improve outreach and correct negative perceptions.
11. Establish and appoint oversight commission.
12. Retroactively apply adopted recommendations *upon renewal* of existing contracts. Language for "upon renewal" was added to this item.
13. Tie diversity goals to performance. The language will be removed with reference to possible bonuses.
14. Create Office of Procurement Accountability within the Office of the Chief Administrative Officer.
15. Simplify RFP boilerplate forms.
16. Establish a program to mentorship program.
17. Establish private sector initiatives.
- [18. Identify why MFD's are not winning contracts.] This recommendation was deleted from the preliminary recommendations.
19. Improve financing options.
20. Extend MFD requirements to other financial transactions.
21. Continue to set annual goals for African American, Hispanic American as well as other designated minority group participation. This recommendation was amended to state that the Office of Procurement should continue to set annual goals.
22. Establish a 35% goal for MFD subcontracting.
23. Fifty percent set-aside for MFD small businesses.

IV. Between Meetings

Ms. Price indicated she would send a link to the survey that is going out for public comment. She will also email the FY14 MFD goals and utilization table.

Mr. Fleming commented that the County Executive asked to be invited to a meeting.

The meeting adjourned at 8:54 p.m.